

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, : S1: 20cr0052 (DLC)
: :
-v- : MEMORANDUM OPINION
: AND ORDER
HERMAN STEWARD, :
: :
Defendant. :
: :
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DENISE COTE, District Judge:

On March 19, 2020, the defendant sought temporary release from the Metropolitan Correctional Center ("MCC") pursuant to 18 U.S.C. § 3142(i) on account of the COVID-19 pandemic. The Government opposes the defendant's release. The defendant's application is denied.

The defendant has been indicted for violation of 21 U.S.C. § 846. In particular, he has been indicted for conspiring to distribute and possess with intent to distribute 28 grams and more of mixtures and substances containing a detectable amount of cocaine base, in violation of 21 U.S.C. § 841(b)(1)(B). He is facing a mandatory minimum term of imprisonment of five years and the Government calculates his sentencing guidelines range as 262 to 327 months. Trial is scheduled for November 2, 2020.

The defendant consented to remand following his release, without prejudice to a future application for bail. The

Government has shown by clear and convincing evidence that his release into the community would present a danger to others, and the defendant does not argue otherwise. Among other things, the defendant has a lengthy criminal record, including for violation of conditions of release and supervision on release. In this case, there is recorded evidence of his participation in a drug conspiracy in which he sold crack cocaine to others. The Government represents that it will be able to prove at trial that some of those sales were from the defendant's own apartment.

The defendant makes this application pursuant to Section 3142(i). That section provides that a judicial officer may, by subsequent order, permit the temporary release of the person, in the custody of a United States marshal or another appropriate person, to the extent that the judicial officer determines such release to be necessary for preparation of the person's defense or for another compelling reason.

18 U.S.C. § 3142(i).

The defendant has not identified any appropriate person into whose custody the defendant may be released or shown a compelling reason for this release. Indeed, based on the record currently before the Court, it appears that the defendant's release into the community would endanger the safety of the community. There is also no reason to find that

the defendant's release would lessen the risk to his health presented by COVID-19.

Dated: New York, New York
March 26, 2020



DENISE COTE

United States District Judge